



REDLINED VERSION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of

Inventor : CAMP, et al.
Appln. No. : 10/720,865
Conf. No.: : 5679
Filed: : November 24, 2003
Title: : **INSULATED STORAGE CONTAINER HAVING A
REMOVABLE LINER**

Group Art Unit : 3727
Examiner : CASTELLANO, Stephen J.
Docket No. : 03-03-US

**MS Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

ATTENTION: Board of Patent Appeals and Interferences

APPEAL BRIEF (37 C.F.R. § 41.37)

This is an Appeal from the decision of the Examiner dated April 9, 2009, rejecting Claims 5-7, 16, 21-38 of the above-captioned application. The claims involved in the appeal are set forth in Appendix 1, which is attached hereto. Due to the specific nature of the issues involved in this Appeal, an Oral Hearing is not deemed necessary and is not requested.

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I. REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest in the above-identified patent application is William P. Camp, as the inventor.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(1)(ii))

There are no other related appeals, interferences, or judicial proceedings known to Appellant, Appellant's legal representatives, or Assignee which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(1)(iii))

A. Status of All Claims in the Application

1. Claims pending: 5-7, 16, 21-38.
2. Claims rejected: 5-7, 16, 21-33, 36-38.
3. Claims allowed: none.
4. Claims canceled: 1-4, ~~and 8-15~~, and 17-20.
5. Claims withdrawn from consideration (e.g., by election/restriction) but not canceled: 34-35.
6. Claims objected to: none.

B. Claims on Appeal

Appellant appeals claims 5, 16, 21-38.

IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))

Appellant has not filed an After Final Amendment. Thus, the pending claims are the claims presented in Appellant's January 10, 2009 Amendment.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))

Appellant provides the following concise, non-limiting explanation of example subject matter of appealed the claims, with parenthetical citations to the original application.

An embodiment of the claimed subject matter, as recited in claim 51, is shown in Fig. 4 and described at p. 6, l. 11 through p. 9, l. 11. Independent claim 51, calls for an insulating container (10) comprising a container body (12) having a container bottom wall and four upstanding container side walls, a lid (14) located adjacent the container body (12).

The insulating container of claim 1-5 also comprises an insulating layer (50) fitted within the container body (12). The insulating layer (50) has an insulating bottom wall (90) and four insulating upstanding walls (92) extending from the insulating bottom wall (90). The insulating layer (50) also has an elongate partition (98) separating the insulating layer (50) into two compartments (86a, 86b). The elongate partition (98) extends from the insulating bottom wall (90) ~~proximate and~~ the lid (14) such that each compartment (86a, 86b) is substantially thermally isolated from one another ~~so that different relative temperatures may be maintained in each compartment (86a, 86b).~~

The insulating container of claim 1-5 also comprises a liner (52) fitted within the insulating layer (50). ~~The liner (52) has at least two latches (64) to removably secure the liner (52) within the container body (12).~~ The liner (52) has oppositely disposed upstanding liner walls (56) and an insulating bottom wall (58). wherein the liner (52) approximately conforms to the contours of the insulating layer. ~~The latches (64) are located on the oppositely disposed upstanding liner walls (56).~~

An embodiment of the claimed subject matter, as recited in claim 16, is shown in Figs. 4 and 7 and described at p. 6, l. 11 through p. 9, l. 11. In claim 16, the insulating container (10) comprises a container body (12) having a bottom container wall and four upstanding container side walls. The insulating container (10) further comprises an insulating layer (50) fitted within the container body (12). The insulating layer (50) has a bottom insulating wall (90) and four upstanding insulating walls (92) extending from the bottom insulating wall (90). The insulating layer (50) has an elongate partition (98) extending from the bottom insulating wall (90) separating the insulating layer (50) into two compartments (86a, 86b) such that each

compartment (86a, 86b) is substantially thermally isolated from one another so that different relative temperatures may be maintained in each compartment (86a, 86b).

The insulating container (10) further comprises a liner (52) fitted within the insulating layer (50). The liner (52) has at least one coupling cavity (62). The coupling cavity (62) comprises a first portion (74) having a cylindrical cross-section; a second portion (76) adjacent the first portion having a smaller cylindrical cross-section; a third portion (78) adjacent the second portion having a smaller cylindrical cross-section wherein each recess may securely hold objects having an outer diameter corresponding to any one of the first portion (74), second portion (76) or third portion (78), wherein the liner (52) approximately conforms with the contours of the insulating layer (50).

An embodiment of the claimed subject matter, as recited in claim 24, is shown in Fig. 4 and described at p. 6, l. 11 through p. 9, l. 11. In claim 24, the insulated container (10) comprises a container body (12) and a lid (14) located adjacent the container body (12). In addition, the insulating container (10) further comprises an insulating layer (50) fitted within the container body (12). The insulating layer (50) has a bottom insulating wall (90) and four upstanding insulating walls (92) extending from the bottom insulating wall (90). The insulating layer (50) also has an elongate partition (98) separating the insulating layer (50) into two compartments (86a, 86b). The elongate partition (98) extends proximate the lid (14) such that each compartment (86a, 86b) is substantially thermally isolated from one another so that different relative temperatures may be maintained in each compartment (86a, 86b).

The insulating container (10) further includes a liner (52) configured to be removable and reusable. The liner (52) fits substantially within the container body (12) wherein the liner (52) is ~~manufactured from a rigid material~~ approximately conforms with the contours of the insulating layer (50) and wherein the liner (52) includes a plurality of coupling cavities (62).

An embodiment of the claimed subject matter, as recited in claim 30, is shown in Figs. 2 and 4 and described at p. 6, l. 11 through p. 9, l. 11. In claim 30, the insulated container (10) comprises a container body (12) and an insulating layer (50) fitted within the container body (12). The insulating layer (50) has a bottom insulating wall (90) and four insulating upstanding walls (92) extending from the bottom insulating wall (90). The insulating layer (50) has an elongate partition (98) separating the insulating layer (50) into two compartments (86a, 86b)

such that each compartment (86a, 86b) is substantially thermally isolated from one another so that different relative temperatures may be maintained in each compartment (86a, 86b).

The insulating container (10) further comprises a liner (52) fitted within the insulating layer (50), wherein the liner approximately conforms with the contours of the insulating layer. The liner (52) has at least one coupling cavity (62). The coupling cavity (62) comprises a first portion (74) having a cylindrical cross-section, a second portion (76) adjacent the first portion (74) having a smaller cylindrical cross-section, and a third portion (78) adjacent the second portion (76) having a smaller cylindrical cross-section. Each portion (74, 76, 78) may securely hold objects having an outer diameter corresponding to an one of the first portion (74), second portion (76), or third portion (78) within the insulating layer (50).

The insulating container (10) further comprises a lid (14), wherein the lid (14) comprises at least one recess (44) formed in the lower surface (38) of the lid (14) aligned with a corresponding coupling cavity (62) such that when the lid (14) is secured to the container body (12) an object is supported in an approximately upright orientation.

An embodiment of the claimed subject matter, as recited in claim 34, is shown in Figs. 4 and 5 and described at p. 6, l. 11 through p. 9, l. 11. In claim 34, the assembly comprises at least one container (24a, 24b, 24c, or 26) and an insulated container (10). The insulated container (10) comprising a body (12) having a bottom wall and four upstanding side walls and an insulating layer (50) fitted within the container body (12). The insulating layer (50) has a bottom wall (90) and four upstanding walls (92) extending from the bottom wall (90). The insulating layer (50) has an elongate partition (98) separating the insulating layer (50) into two compartments (86a, 86b) comprising a first compartment (86a) maintained at a first temperature and a second compartment (86b) maintained at a second temperature wherein the container (10) may be positioned in either the first compartment (86a) or the second compartment (86b).

The insulating container (1) further comprises a liner (52) fitted within the insulating layer (50). The liner (52) has at least one latch (64).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. § 41.37(c)(1)(vi))

Appellants appeal each of the following rejections:

- A. the rejection of claims 5, 24, 36-37 under 35 U.S.C. § 102(b) as being anticipated by Dooley;
- B. the rejection of claims 5, 24, 36-37 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook;
- C. the rejection of claims 16, 21-23, 25-30 and 33 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale;
- D. the rejection of claims 16, 21-23, 25-30 and 33 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook and Gale;
- E. the rejection of claims 31-32 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale, Lytle and Ragland;
- F. the rejection of claims 31-32 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook, Gale, Lytle and Ragland;
- G. the rejection of claim 38 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook and Bartholomew;
- H. the rejection of claims 6-7 under 35 U.S.C. § 112; and
- I. the rejection of claims 6-7 under 35 U.S.C. § 103(a) as being unpatentable over Dooley in view of Shook.

VII. ARGUMENT (37 C.F.R. § 41.37(c)(1)(vii))

The Applicant's invention is a novel and nonobvious insulated storage container which solves one or more of the problems found in the art regarding the storage and transportation of objects, such as liquid filled containers. As noted in the background of the invention, mother's and caregivers of newborns often find it desirable to transport milk, juice, or formula for their newborns. When so doing, they often resort to using commonly available coolers. However, these devices have proven to be undesirable in many respects.

Contemporary coolers typically include a large single cavity configured to maintain their contents at a single temperature. They don't have separate chambers which are insulated to provide different relative temperatures. For instance, when a mother, or caregiver, desires to transport formula filled bottles, it would be desirable to maintain some of the formula filled bottles at a refrigerated temperature to reduce spoilage while simultaneously heating a bottle to

be used during the next feeding to room temperature. The prior art simply can not perform this function.

Another problem with contemporary coolers is that they are not designed to hold bottles or other objects in an upright orientation. Therefore, the liquid filled bottles often fall over and may drip inside the container creating a mess and potentially result in contamination, which is particularly undesirable when used for infant feeding. Spilled milk over time can spoil and result in contamination. Both of which are undesirable when used with infants who have underdeveloped immune systems. To further complicate this problem, contemporary coolers are difficult to clean due to their bulk. They do not easily fit in the sink or dishwasher. It is common for people to wash their coolers outside with a garden hose, which may be acceptable when used for some applications. However, if a higher degree of sanitation is required, these devices are not suitable. Given the fact that contemporary coolers often allow the objects to spill within the cooler in combination with the difficulty to effectively clean these devices, the state of the art is less than desirable for use with infant feeding.

The present invention, as recited in the pending claims, overcomes one or more of the above recited problems: store liquid filled containers at different relative temperatures, store liquid filled containers securely to prevent them from spilling, and be capable of thorough cleaning to prevent contamination. The art of record presented by the Examiner does not solve these problems. And as argued repeatedly during prosecution, if anything, the art of record teaches away from the Applicant's invention.

A. The rejection of claims 5, 24, 36-37 under 35 U.S.C. § 102(b) is defective since the art of record does not teach each and every element of the claimed invention.

The Examiner concluded that Dooley anticipates the Applicant's invention. However, the invention recited in claim 5 recites that the insulating layer includes "an elongate partition extending between the insulating bottom wall and the lid. Similarly, claim 24 recites that the insulating layer has "an elongate partition extending proximate the lid such that each compartment is substantially thermally isolated from one another. . . ." Dooley does not have an elongate partition. Dooley was configured to provide a cooler with a sloped section so that beverage cans would roll out when front panel 34 is opened. Dooley permits ice to be placed on

either side and over the beverage cans thus creating a single temperature zone rather than two “substantially thermally isolated” compartments which permit different relative temperatures to be maintained in each compartment as recited in claims 5 and 24. There is simply no teaching in this reference, or any of the other art of record, that it would be desirable to create separate substantially thermally isolated zones that permit different relative temperatures to be maintained in each compartment.

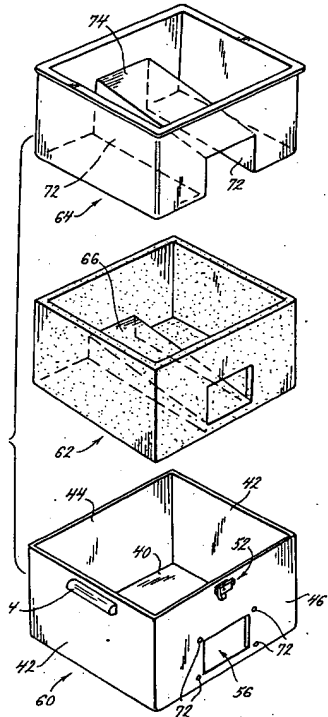


Fig. 3. Dooley Device

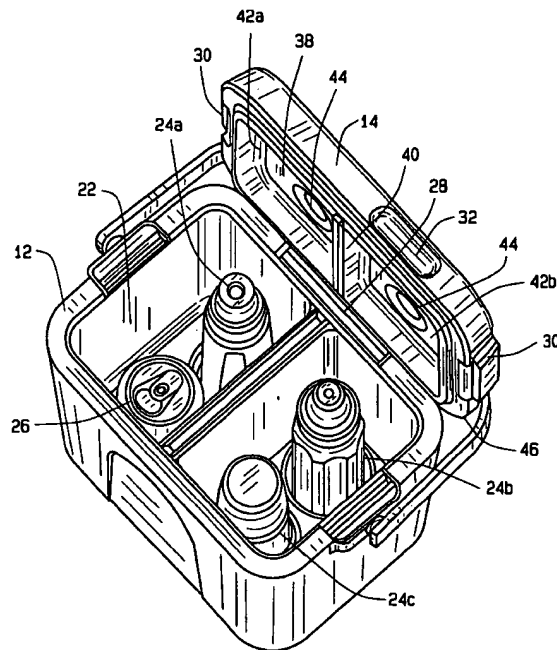


Fig. 2. Applicant's Invention.

Secondly, claims 5 and 24 both recite that the insulating container includes a liner. In addition, claim 5 further states that the liner has “at least two latches.” Dooley does not include a liner and certainly not “a liner having at least two latches” to secure the liner (inner shell 64) in place. As noted in the present application, the applicant’s invented a removable liner that could be secured within the insulating container. The liner is separate and removable from the insulating layer. The liner may be removed from the insulating layer when it is desired to clean the interior of the applicant’s invention. Dooley does not even recognize the problem identified by the Applicant (ease of cleaning), and certainly does not suggest a solution.

Third, with respect to claim 24, the liner of the Applicant's invention includes "a plurality of coupling cavities." The device disclosed in Dooley simply does not include a single coupling cavity let alone a plurality of coupling cavities. Dooley merely discloses a sloped section down which beverage cans can slide when panel 24 is opened. The Examiner essentially ignores this limitation of the claims.

As highlighted above, Dooley is defective in several respects. Dooley does not disclose the Applicant's elongate partition. Dooley doesn't disclose a liner at all ~~or a liner having at least two latches~~. And, Dooley does not disclose coupling cavities. In view of the forgoing, independent claims 5 and 24 as well as dependent claims 36-37 are deemed allowable.

B. the rejection of claims 5, 24, 36-37 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook.

The Applicant asserts that the deficiencies highlighted above with respect to Dooley in Section A are not supplemented by Shook. Shook does not disclose an elongate partition; Shook does not disclose a liner; Shook does not disclose a liner having having coupling cavities ~~latches~~. Accordingly, the Applicant's remarks above in Section A with respect to Dooley are hereby incorporated by reference in this section.

As noted above, the invention recited in claim 5 recites that the insulating layer includes "an elongate partition extending between the insulating bottom wall and the lid." Similarly, claim 24 recites that the insulating layer has "an elongate partition extending proximate the lid such that each compartment is substantially thermally isolated from one another. . . ." Dooley does not recognize the desirability of having an elongate partition which extends proximate the lid. To supplement this deficiency, the Examiner contends that Shook discloses an elongate partition which extends to an inner lid.

The Applicant respectfully disagrees with the Examiner's characterization of Shook and the purported obviousness of combining Dooley and Shook as suggested by the Examiner. It would not be obvious to modify a reference in a manner that destroys the device for its intended

purpose. M.P.E.P. § 2144.05, citing, *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Upon careful review, Shook doesn't disclose an elongate partition. Shook teaches cavities formed in a sheet of insulative material. These cavities act to "seat against food containers in the cavities and compressibly retain the food containers in the cavities." (Col. 4, ll. 4-6). The cavities recited in Shook are not analogous to the compartments recited in claims 5 and 24. If anything, the cavities seem more analogous to the scalloped portions 102 formed in the insulated layer 50 of the Applicant's invention. These cavities are repeatedly described as being of such a size and shape to mattingly receive the beverage and food containers in order to retain these items snugly within their cavities (Col. 4, ll. 30-35). This configuration does not provide space for ice packs or heat packs and thus can not create different relative temperature zones between the two compartments as recited in claims 5 and 24. Essentially, this element of Shook is the bottom portion of the Applicant's invention absent the upstanding walls and elongate partition which define the compartments. Shook encloses or encapsulates the food and beverages.

Of course, the cavities could be made larger to accept an ice pack or heat pack; however, doing so would result in a device that is no longer capable of holding the items in a matting configuration. For a device which may be placed flat as shown in Fig. 1 or carried by the handle in a complete different orientation, it would not be obvious to enlarge these cavities since doing so would permit the items to slip and slide around potentially resulting in damage to the items or the case. Perhaps, Shook allows for objects to be securely stored, but it doesn't contemplate how one can also heat or cool these items since the cavities are shapes to mattingly receive their objects. The Applicant overcame this problem by providing an insulating container with an elongate partition which can separate the device into a cold side and a warm side along with cavities to hold the items upright.

In addition, Shook does not disclose a removable liner which can be easily removed as described in the Applicant's invention. Shook merely discloses a removable foam insert which can be fitted in a carrying case. Neither Dooley nor Shook teaches a separate liner (as recited in claim 5). ~~Moreover, neither Dooley nor Shook teach "a liner having at least two latches to removably secure said liner within said container body" (as recited in claim 5) or as a liner which~~

is “configured to be removable and reusable” (as recited in claim 24). At best, the removable foam insert could be construed as an insulating layer which alone does not meet the limitations of the independent claims and clearly does not render the Applicant’s invention as obvious.

Secondly, to modify Dooley, as suggested by the Examiner, would render Dooley unsuitable for its intended purpose. Dooley was configured to provide a cooler with a sloped section so that beverage cans would roll out when front panel 34 is opened. If anything, Dooley teaches away from the invention recited in claim 5, Dooley permits ice to be placed on either side and over the beverage cans thus creating a single temperature zone rather than two “thermally isolated” compartments as recited in claims 5 and 24. There is simply no teaching in this reference, or any of the other art of record, that it would be desirable to create separate substantially thermally isolated zones. Modifying Dooley as suggested by the Examiner would destroy, or at least substantially undermine its ability to effectively cool the beverage cans. Moreover, if the elongate partition is truly extended upward, as suggested by the examiner, the sloped section would no longer function as a sloped section. The beverage cans would no longer roll out. If the Examiner is taken literally and the sloped section is extended upward proximate the lid, there would be no room for the beverage cans to be placed on the sloped section at all. Essentially, Dooley would need to be completely destroyed and reconfigured. It would not be obvious to modify the references as suggested by the Examiner to arrive at the Applicant’s invention as recited in claims 5, and 24, and certainly not the unique configuration recited in claims 36 and 37 to thermally isolate the compartments.

As noted above, Dooley is defective in several respects as an individual reference. Shook does not teach the features which Dooley lacks (e.g., elongate partition, a liner, or a liner ~~having latches~~with coupling cavities). Yet, even if Shook is somehow construed to teach these missing features, it would not have been obvious to modify Shook and/or Dooley as suggested by the Examiner since doing so destroys the ability of each of these disclosed devices ~~from~~to function for their intended purpose. In view of the forgoing, independent claims 5 and 24 as well as dependent claims 36-37 are deemed allowable.

C. the rejection of claims 16, 21-23, 25-30 and 33 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale.

The Applicant asserts that the deficiencies highlighted above with respect to Dooley in Section A are not supplemented by Gale. While the Examiner is correct that Gale teaches a shipping carton for glass bottles, Gale does not teach several of the features which missing in Dooley. As noted above, Dooley does not disclose an elongate partition or a liner. Gale also lacks these features. Accordingly, the Applicant's remarks above in Section A with respect to the elongate partition and the liner are hereby incorporated by reference in this section.

In addition to the deficiencies already highlighted above regarding the lack of an elongate partition and liner, neither Gale nor Dooley in any way disclose or teach the coupling cavity recited in claim 16 and 30. Dooley does not disclose a coupling cavity at all, which necessitated the use of Gale. However, Gale merely discloses an insert which can engage either the narrow neck of a bottle or the wider base of a bottle. This disclosure does not teach the novel three portions recited with respect to the Applicant's coupling cavity in claims 16 and 30, or the particular dimensions recited in claims 21-23, 25-30. The Applicant has found these three sizes will accommodate the majority of objects that are likely to be used in conjunction with the Applicant's invention. Gale is optimized for use with Wine bottles. The particular shapes and sizes disclosed in the present application are not taught or in anyway suggested by Gale.

Claims 25-29 were rejected by the Examiner. However, the only statement regarding the Examiner's rejection of these dependent claims was that summary statement "Re claim 26, the polygonal shape would have been an obvious as a design choice shape modification." The Applicant finds it difficult to respond to the Examiner's rejection regarding claims 25 and 27-29 since the basis for these rejections is absent. Nonetheless, the Applicant contents that claims 25-29 are allowable for at least the same reasons highlighted above in Sections A and B with respect to claim 24.

Similarly, Claim 33 is deemed allowable for at least the same reasons recited in this section, Section C, with respect to claim 30. Moreover, Gale in no way teaches the domed portion formed on the upper surface of the insulated container. Gale involves securing glass bottles inside containers. It would not be obvious, and if anything would undermine their

usefulness as storage containers, to form any detail such as a domed portion on the other surface of the storage containers.

In view of the forgoing, independent claims 16 and 30, as well as dependent claims 21-23, 25-29, and 33 are deemed allowable.

D. the rejection of claims 16, 21-23, 25-30 and 33 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook and Gale.

The Examiner recited an essentially duplicative rejection of claims 16, 21-23, 25-30 and 33. As thoroughly addressed above with respect to rejection of these claims under Dooley in light of Gale in Section C and Dooley in light of Shook in Section B, the Examiner has failed to meet his burden. As such, the arguments presented above in Sections A-C are hereby incorporated by reference in this section, Section D. Briefly, as noted above, neither Dooly nor Gale disclose an elongate portion, a liner, or the Applicant's unique coupling cavity as recited in claims 16, 21-23, and 25-30. Neither reference discloses the Applicant's domed portions recited in claim 33. Shook may disclose a removable insert, but it certainly does not teach or otherwise suggest these missing features as noted above in Section B.

In view of the forgoing, independent claims 16 and 30, as well as dependent claims 21-23, 25-29, and 33 are deemed allowable.

E. the rejection of claims 31-32 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Gale, Lytle and Ragland.

Claims 31 and 32 are dependent claims based on independent claim 30. As such Applicant contends that claims 31 and 32 are allowable based upon their dependency upon claim 30 as detailed above in Sections C and D. Applicant hereby incorporates the arguments made above in Sections C, and D in this section, Section E. Lytle discloses a hinged closure used as a simple enclosure for prints, maps, drawings, umbrellas, and the like. Ragland discloses a car seat snack tray. These references also suffer from the same failings as the other references presented by the Examiner. Lytle does not disclose an elongate partition or; a liner ~~or a liner with latches~~.

Ragland doesn't disclose an insulating layer having an elongate partition capable of separating the insulating layer into two compartments. Although Ragland could be construed to include a liner. Ragland does not disclose a liner having coupling cavities as recited in claim 30. ~~In addition, Ragland doesn't include a latch formed on the liner.~~ Instead, Ragland includes a latch 22 formed on the base 12 (Col. 5, ll. 28-34). Neither Lytle nor Ragland addresses the deficiencies inherent in the Examiner's other references.

In view of the forgoing, dependent claims 31 and 32 are deemed allowable.

F. the rejection of claims 31-32 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook, Gale, Lytle and Ragland

Claims 31 and 32 are dependent claims based on independent claim 30. As such Applicant contends that claims 31 and 32 are allowable based upon their dependency upon claim 30 as detailed above in Sections C, D, and E. Applicant hereby incorporates the arguments made above in Sections C, D, and E, in this section, Section F. Shook discloses a foam insert that can be fitted in a carrying case. Lytle discloses a hinged closure used as a simple enclosure for prints, maps, drawings, umbrellas, and the like. Ragland discloses a car seat snack tray. These references also suffer from the same failings as the other references presented by the Examiner. Shook and Lytle do not disclose an elongate partition, ~~or a liner or a liner with latches.~~ Ragland doesn't disclose an insulating layer having an elongate partition capable of separating the insulating layer into two compartments. Although Ragland could be construed to include a liner. Ragland does not disclose a liner having coupling cavities as recited in claim 30. ~~In addition, Ragland doesn't include a latch formed on the liner.~~ Instead, Ragland includes a latch 22 formed on the base 12 (Col. 5, ll. 28-34). Neither Lytle nor Ragland addresses the deficiencies inherent in the Examiner's other references.

In view of the forgoing, dependent claims 31 and 32 are deemed allowable.

G. the rejection of claim 38 under 35 U.S.C. § 103(a) as being obvious over Dooley in view of Shook and Bartholomew.

The Applicant asserts that the deficiencies highlighted above with respect to Dooley in Section A are not supplemented by Shook, and Bartholomew. Accordingly, the Applicant's

remarks above in Section A with respect to Dooley and Section B with respect to Dooley in light of Shook are hereby incorporated by reference in this section, Section G. Applicant contends that dependent claim 38 is allowable for the same reasons as independent claim 30. The rib disclosed by Bartholomew does not address the shortcomings of Dooley and Shook addressed above in Sections A and B of this brief.

In view of the forgoing, dependent claim 38 are deemed allowable.

H. the rejection of claims 6-7 under 35 U.S.C. § 112.

The Applicant has chosen to not appeal the rejection of claims 6-7 under 35 U.S.C. § 112.

I. the rejection of claims 6-7 under 35 U.S.C. § 103(a) as being unpatentable over Dooley in view of Shook.

The Applicant has chosen to not appeal the rejection of claims 6-7 under 35 U.S.C. § 103(a).

VIII. CONCLUSION

In view of the foregoing, Appellant requests the reversal of the pending rejections of claims 5, 16, 21-38.

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Enclosures: Appendix IX. Claims Appendix
Appendix X. Evidence Appendix
Appendix XI. Related Proceedings Appendix

IX. CLAIMS APPENDIX (37 C.F.R. § 41.37(c)(1)(viii))

The following pending claims 5-7, 16, 21-38, as presented in Appellants' January 10, 2009 Amendment.

5. An insulating container comprising:

a container body having a container bottom wall and four upstanding container side walls;

a lid located adjacent the container body;

an insulating layer fitted within the container body, said insulating layer having an insulating bottom wall and four insulating upstanding walls extending from the insulating bottom wall, said insulating layer having

_____ an elongate partition separating the insulating layer into two compartments, said elongate partition extending between the insulating bottom wall and ~~from the insulating bottom wall proximate the lid~~ such that each compartment is substantially thermally isolated from one another ~~so that different relative temperatures may be maintained in each compartment~~; and

a liner fitted within the insulating layer, ~~said liner having at least two latches to removably secure said liner within said container body~~, said liner having oppositely disposed upstanding liner walls and an insulating bottom wall, ~~said latches located on the oppositely disposed upstanding liner walls~~, wherein the liner approximately conforms with the contours of the insulating layer.

6. The insulated container as recited in claim 5, wherein said latch comprises:

a flexible arm having a hook formed on said liner; and

a slot formed in said container body having an aperture for receipt of said hook.

7. The insulated container as recited in claim 6, wherein said liner further

comprises a channel formed in said liner to vent air trapped between said liner and said insulated layer.

16. An insulating container comprising:

a container body having a bottom container wall and four upstanding container side walls;

an insulating layer fitted within the container body, said insulating layer having a bottom insulating wall and four upstanding insulating walls extending from the bottom insulating wall, said insulating layer having an elongate partition extending from the bottom insulating wall separating the insulating layer into two compartments such that each compartment is substantially thermally isolated from one another so that different relative temperatures may be maintained in each compartment; and

a liner fitted within the insulating layer, the liner having at least one coupling cavity; and wherein said coupling cavity comprises a first portion having a cylindrical cross-section; a second portion adjacent the first portion having a smaller cylindrical cross-section; a third portion adjacent the second portion having a smaller cylindrical cross-section wherein each recess may securely hold objects having an outer diameter corresponding to any one of the first portion, second portion or third portion, wherein the liner approximately conforms with the contours of the insulating layer.

21. The insulating container as recited in claim 16, wherein said first portion has a cylindrical cross-section with a diameter of approximately 2.6 inches.

22. The insulating container as recited in claim 16, wherein said second portion has a cylindrical cross-section with a diameter of approximately 2.3 inches.

23. The insulating container as recited in claim 16, wherein said third portion has a cylindrical cross-section with a diameter of approximately 2 inches.

24. An insulated container comprising:

a container body;

a lid located adjacent the container body;

an insulating layer fitted within the container body, said insulating layer having a bottom insulating wall and four upstanding insulating walls extending from the bottom insulating wall, said insulating layer having an elongate partition separating the insulating layer

into two compartments, said elongate partition extending proximate the lid such that each compartment is substantially thermally isolated from one another so that different relative temperatures may be maintained in each compartment; and

a liner configured to be removable and reusable, said liner fits substantially within the container body ~~wherein said liner is manufactured from a rigid material~~ wherein the liner approximately conforms with the contours of the insulating layer, and wherein said liner includes a plurality of coupling cavities.

25. The insulating container as recited in claims claim 24, wherein each coupling cavity comprises:

a first portion having a cross-sectional shape;

a second portion adjacent the first portion having a smaller cross-sectional shape;

and

a third portion adjacent the second portion having a smaller cross-sectional shape

wherein each recess may be securely hold objects having an outer diameter corresponding to any one of the first portion, second portion, or third portion.

26. The insulating container as recited in claim 25, wherein the cross-sectional shape of the first portion, the second portion, and the third portion are polygonal.

27. The insulating container as recited in claim 25, wherein said first portion has a cylindrical cross-section with a diameter of approximately 2.6 inches.

28. The insulating container as recited in claim 25, wherein said second portion has a cylindrical cross-section with a diameter of approximately 2.3 inches.

29. The insulating container as recited in claim 25, wherein said third portion has a cylindrical cross-section with a diameter of approximately 2 inches.

30. An insulated container comprising:

a container body;

an insulating layer fitted within the container body, said insulating layer having a bottom insulating wall and four upstanding insulating walls extending from the bottom insulating wall, said insulating layer having an elongate partition separating the insulating layer into two compartments such that each compartment is substantially thermally isolated from one another so that different relative temperatures may be maintained in each compartment; and

a liner fitted within the insulating layer, wherein the liner approximately conforms with the contours of the insulating layer, the liner having at least one coupling cavity; and wherein said coupling cavity comprises a first portion having a cylindrical cross-section; a second portion adjacent the first portion having a smaller cylindrical cross-section; a third portion adjacent the second portion having a smaller cylindrical cross-section wherein each portion may securely hold objects having an outer diameter corresponding to an one of the first portion, second portion, or third portion within the insulating layer; and

a lid, wherein said lid comprises at least one recess formed in the lower surface of said lid aligned with a corresponding coupling cavity such that when said lid is secured to said container body an object is supported in an approximately upright orientation.

31. The insulated container as recited in claim 30, wherein said liner comprises at least one latch, said latch comprising:

- a flexible arm having a hook formed on said liner; and
- a slot formed in said container body having an aperture for receipt of said hook.

32. The insulated container as recited in claim 30, wherein said liner further comprises a channel formed in said liner to vent air trapped between said liner and said insulated later.

33. The insulated container as recited in claim 30, wherein said upper surface has at least one domed portion, wherein said domed portion is sized to fit with a recess of a can or bottle.

34. An assembly comprising:
at least one container;

an insulated container comprising:

a body having a bottom wall and four upstanding side walls;

an insulating layer fitted within the container body, said insulating layer having a bottom wall and four upstanding walls extending from the bottom wall, said insulating layer having an elongate partition separating the insulating layer into two compartments comprising a first compartment maintained at a first temperature and a second compartment maintained at a second temperature wherein the container may be positioned in either the first compartment or the second compartment; and

a liner fitted within the insulating layer, the liner having at least one latch.

35. The assembly as recited in claim 34, wherein the first temperature is cooler than the second temperature whereby the container is cooled when placed in the first compartment and warmed when placed in the second compartment.

36. The insulated container as recited in claim 5, wherein the liner further comprises a pair of side walls forming an elongate channel.

37. The insulating container as recited in claim 36, wherein the elongate partition fits in the elongate channel.

38. The insulated container as recited in claim 37, wherein the lid further comprises a rib, and wherein the pair of side walls abut the rib.

X. EVIDENCE APPENDIX (37 C.F.R. § 41.37(c)(1)(ix))

None.

XII. RELATED PROCEEDINGS APPENDIX (37 C.F.R. § 41.37(c)(1)(x))

There are no decisions rendered by a court or the Board in any proceeding identified pursuant to 37 C.F.R. § 41.37(c)(1)(ii).